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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,398	01/14/2005	Mary Lafuze Comer	PU030248	2261

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EXAMINER

CHEVALIER, ROBERT

ART UNIT

PAPER NUMBER

2621

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/521,398

Applicant(s)

COMER ET AL.

Examiner

Bob Chevalier

Art Unit

2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-27 is/are rejected.
- 7) ☒ Claim(s) 6 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/14/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, 8-12, 15-18, and 21-25, are rejected under 35 U.S.C. 102(e) as being anticipated by Hughes, Jr. et al.

Hughes, Jr. et al discloses a digital video recording apparatus that shows all the limitations recited in claims 1, and 15, including the feature providing a multiple version of a digital recording (See Hughes, Jr. et al's Figure 1), the feature of multiplexing a base layer with an enhancement layer, the base layer representing a first version of the digital recording, and the enhancement layer having enhancement data which can be combined with the base layer to represent a second version of the digital recording as specified in the present claims 1, and 15. (See Hughes Jr. et al's Figure 5).

With regard to claim 2, the feature of interleaving the base layer with an enhancement layer as specified thereof is present in cited reference of Hughes Jr. et al. (See Hughes Jr. et al's claim 5).

With regard to claims 3-4, and 16-17, it is noted that the limitations recited thereof are present in Hughes Jr. et al, including the feature of storing the base

interleave units and the enhancement interleave units in an alternating scheme as specified thereof. (See Hughes Jr. et al's Figure 1, components 114, 112).

With regard to claims 5, and 18, the feature of the playback time being correlated to the base interleave unit to be approximately equal to a playback time correlated to the enhancement interleave units as specified thereof would be inherently present in the cited reference of Hughes Jr. et al. Because, one of ordinary skill in the art would readily recognize that playback two different versions of the same movie (Standard definition an high definition versions) would approximately take the same playback time since the two versions are basically the same movie.

With regard to claims 8-9, and 21-22, the feature of the coding being a base data in a format substantially similar to MPEG-2 as specified thereof is present in Hughes Jr. et al. (See Hughes Jr. et al's page 2, paragraph [0029], lines 7-8).

With regard to claims 10, and 23, the feature of the second version comprising high definition program content as specified thereof is present in Hughes Jr. et al. (See Hughes Jr. et al (See Hughes Jr. et al's claim 16).

With regard to claims 11, and 24, the feature of storing the base layer and the enhancement layer on a single side storage medium as specified thereof is present in Hughes Jr. et al. (See Hughes Jr. et al's Figure 1, component 110).

With regard to claims 12, and 25, the feature of the storage medium being a DVD as specified thereof is present in Hughes Jr. et al. (See Hughes Jr. et al's Figure 1, component 110).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 13-14, and 26-27, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes Jr. et al in view of Official Notice.

Hughes Jr. et al discloses a DVD apparatus that shows substantially the same limitations recited in claims 13-14, and 26-27, including the feature of the base layer and the enhancement layer as specified in the present claims 13-14, and 26-27. (See Hughes Jr. et al's Figure 1).

Hughes Jr. et al fails to specifically disclose the feature of the decoder time stamp and the presentation time stamp as specified in the present claims 13-14, and 26-27.

Examiner takes Official Notice in that it is notoriously well known in the video encoding/decoding art to have a decoder time stamp and a presentation time stamp added to the encoded video data for the purpose of adjusting the decoding time and the display time during playback operation as specified in the present claims 13-14, and 26-27.

It would have been obvious to one skilled in the art to modify Hughes Jr. et al's apparatus wherein the video data generated in the compressing means provided thereof (See Hughes Jr. et al's Figure 1, components 106, and 108) would include the

feature of the decoder time stamp and a presentation time stamp added to the encoded video data for the purpose of adjusting the decoding time and the display time during playback operation in the same conventional manner as shown in the prior art.

Examiner has taken Official Notice. The motivation is to adjust the decoding time and the display time during playback operation in the same conventional manner as suggested in the prior art.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 15-27 are rejected under 35 U.S.C. 101 because the claim is directed to a recording medium storing nonfunctional descriptive material.

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are neither physical “things” nor statutory processes. See, e.g. Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory) and merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make it statutory. See MPEP 2106.IV.B.1.

5. Claims 6-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bob Chevalier whose telephone number is 571-272-7374. The examiner can normally be reached on MM-F (9:00-6:30), second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

B. Chevalier
November 25, 2006.


ROBERT CHEVALIER
PRIMARY EXAMINER